

United States
Circuit Court of Appeals
For the Ninth Circuit.

CALIFORNIA CANNERIES COMPANY, a Corporation,

Appellant,

vs.

DUNKLEY COMPANY, a Corporation,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

Filed

APR - 4 1916

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

(No. 203.)

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

Bill of Complaint.

FOR INFRINGEMENT OF PATENT, NO.

1,104,175.

Now comes Dunkley Company, plaintiff in the above-entitled suit, and files this its bill of complaint against California Canneries Company, defendant, and for cause of action alleges:

1. That the full name of plaintiff is Dunkley Company, and during all the times hereinafter mentioned said plaintiff was and still is a corporation created under the laws of the State of Michigan, and having its principal place of business at the city of Kalamazoo, in the State of Michigan.

2. That the full name of the defendant is California Canneries Company, and during all the times hereinafter mentioned said defendant was and still is a corporation created and existing under the laws of the State of California, having its principal place of business at the city and county of San Francisco in the State of California.

3. That the ground upon which the Court's juris-

diction depends is that this is a suit in equity arising under the patent laws of the United States.

4. That heretofore, to wit, on and prior to November 29, 1904, one Samuel J. Dnnkley was the original and first inventor of a new and useful invention, to wit, a machine for peeling peaches [1*] and other fruit, and on that day made application to the Government of the United States for the issuance to him of letters patent therefor, and before the issuance of any patent therefor said Dunkley sold and assigned to the plaintiff herein the aforesaid invention and application, together with such letters patent as might be granted thereon.

5. That thereafter, to wit, on July 21, 1914, such proceedings were had and taken in the matter of said application that letters patent of the United States for said invention numbered 1,104,175, were granted, issued and delivered by the Government of the United States to the plaintiff whereby there was granted to the plaintiff, its successors and assigns, the sole and exclusive right to make, use and vend the said invention throughout the United States of America and the territories thereof during the period of seventeen years from July 21st, 1914; that a more particular description of the invention patented in and by said letters patent will fully appear from the said letters patent themselves which are ready in court to be produced by the plaintiff.

6. That ever since the issuance of said letters patent, plaintiff has been and still is the sole owner and holder thereof and of all the rights thereby granted.

*Page-number appearing at foot of page of original certified Record.

7. That since the issuance of said patent plaintiff has practiced the said invention by putting into use machines containing the same, and upon each of said machines has marked the word "Patented," together with the date and number of said letters patent.

8. That since the issuance of said letters patent, in the Northern District of California and elsewhere, the defendant without the license or consent of the plaintiff has made and used and is now engaged in using machines for peeling peaches and other [2] fruit, containing the invention patented in and by said letters patent, No. 1,104,175, and has thereby infringed upon said letters patent: that by reason of the infringement aforesaid, defendant has realized profits, and plaintiff has suffered damages, but the amount of such profits and damages is unknown to plaintiff and can be ascertained only by an accounting.

9. That plaintiff has requested defendant to desist from infringing upon the said letters patent and to account to the plaintiff for the damages suffered by plaintiff and the profits realized by the defendant from past infringement, but the defendant has failed and refused to comply with said request or any part thereof.

10. That the defendant threatens to continue the said infringement and unless restrained therefrom by this court will continue the same, whereby plaintiff will suffer great and irreparable injury and damage, for which it has no plain, speedy or adequate remedy at law.

WHEREFORE, plaintiff prays:

I. That upon the filing of this bill a preliminary injunction be granted to plaintiff enjoining and restraining the defendant, its officers, agents, servants, attorneys and employees, pendente lite, from making, using or selling, or threatening, advertising or offering to make, use or sell any machine for peeling peaches or other fruit containing the invention patented in and by said letters patent, No. 1,104,175, and from further infringing upon said letters patent either directly or indirectly or in any manner whatever.

II. That upon the final hearing, the defendant herein, its officers, agents, servants, attorneys, and employees, and each of them, be permanently and finally enjoined and restrained from making, using or selling, or threatening, advertising or offering [3] to make, use or sell, any machine for peeling peaches or other fruit containing the invention patented in and by said letters patent, No. 1,104,175, and from infringing either directly or indirectly or in any manner whatever, and also from aiding, abetting and contributing to any such infringement, and that the writ of injunction be issued out of and under the seal of this court enjoining the defendant, its officers, agents, attorneys, servants, and employees, as aforesaid.

III. That it be ordered, adjudged and decreed that plaintiff have and recover from the defendant the profits realized by the defendant and the damages sustained by the plaintiff from and by reason of the infringement aforesaid, together with costs of suit,

and such other and further relief as to the Court may seem proper and in accordance with equity and good conscience.

DUNKLEY COMPANY.

By S. J. DUNKLEY,
Secretary.

JOHN H. MILLER,

Solicitor and Counsel for Plaintiff,

723-6 Crocker Building,

San Francisco, California. [4]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Samuel J. Dunkley, being duly sworn, deposes and says that he is the secretary of the plaintiff mentioned in the within entitled action; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

SAMUEL J. DUNKLEY.

Subscribed and sworn to before me this 6th day of August, 1915.

(Seal)

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 6, 1915. W. B. Maling,
Clerk. By J A. Schaertzer, Deputy Clerk. [5]

(Subpoena Ad Respondendum.)

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, Second Division.

IN EQUITY.

The President of the United States of America,
Greeting: To California Canneries Company,

You are hereby commanded, that you be and appear in said District Court of the United States, Second Division, aforesaid, at the courtroom in San Francisco, twenty days from the date hereof, to answer a bill of complaint exhibited against you in said court by Dunkley Company, a corporation created under the laws of the State of Michigan and having its principal place of business at the city of Kalamazoo in the State of Michigan, and to do and receive what the said court shall have considered in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 6th day of August, in the year of our Lord one thousand nine hundred and fifteen and of our Independence the 140th.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk,

MEMORANDUM PURSUANT TO RULE 12,
RULES OF PRACTICE FOR THE COURTS
OF EQUITY OF THE UNITED STATES.

You are hereby required to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpoena, at the clerk's office of said court, pursuant to said bill; otherwise the said bill may be taken pro confesso.

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [6]

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Subpoena Ad Respondendum on the therein named California Canneries Company, a corporation, by handing to and leaving a true and correct copy thereof with I. Jacobs, as president of the above-named corporation, personally, at Oakland, California, in said District, on the ninth day of August, A. D. 1915.

J. B. HOLOHAN,
U. S. Marshal.
By Thos. F. Mulhall,
Deputy.

[Endorsed]: Filed Aug. 10, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [7]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

IN EQUITY—No 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

**Answer of the California Canneries Co. to Plaintiff's
Bill of Complaint.**

The defendant, the California Canneries Company, now and at all times saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the errors or uncertainties or other imperfections contained in said Bill of Complaint, for answer thereto or unto so much thereof as said defendant is advised is material for it to answer, says:

I.

Denies that heretofore, to wit, on and prior to November 29, 1904, or at all, one Samuel J. Dunkley was the original and first, or original or first inventor, or the inventor of a new and useful, or new or useful invention, to wit, a machine for peeling peaches or other fruit, or that *the Samuel J. Dunkley* was the original or first inventor of said invention at all. And that as to the rest of the averments in paragraph four (4) of Plaintiff's Bill of Complaint contained, defendant alleges that it has no informa-

tion or belief sufficient to enable it to answer, and placing its denial upon that ground, said defendant denies that on the 29th day of November, 1904, the said Samuel J. Dunkley made application to the Government of the United States for the issuance to him of letters patent for a machine for peeling peaches and other fruit, and denies that before the issuance of any patent therefor, [8] or at all, said Dunkley sold and assigned, or sold or assigned to plaintiff the said invention or application, together with or without such letters patent as might be granted thereon.

II.

That as to the allegations contained in paragraphs five, six and seven of said Bill of Complaint of plaintiff, said defendant alleges that it has no information or belief sufficient to enable it to answer, and basing its denial upon that ground, said defendant denies each and every, all and singular the allegations contained in said paragraphs five, six and seven of plaintiff's said Bill of Complaint.

III.

Said defendant denies that since the issuance of letters patent, as alleged in said Bill of Complaint, in the Northern District of California, or otherwise, the said defendant, without the license or consent of plaintiff has made and used, and is now engaged in using, or has made or used, or is now engaged in using machines for peeling peaches and other fruit, containing the invention patented in and by said letters patent No. 1,104,175, or that defendant has thereby or at all infringed upon said letters patent, and said defendant denies that by reason of the infringement,

as alleged in said Bill of Complaint, or by reason of any infringement, or at all, defendant has realized profits or plaintiff has suffered damages. And defendant alleges that the said Samuel J. Dunkley was not the original or first inventor or discoverer of the invention purported to be covered by said letters patent, or of any material or substantial parts thereof and that the same, or material or substantial parts thereof had been in public use and on sale in this country prior to said alleged invention and for more than two years prior to the application for said letters patent. [9] And defendant specifies, as instances of such prior use, that it, the said defendant, or its predecessors, ever since the year 1886, has been using a machine or machines for peeling peaches, involving the material or substantial parts of the invention claimed by the said plaintiff under the letters patent referred to in plaintiff's said Bill of Complaint. That defendant at the present time has only one machine in use for peeling peaches and other fruit, and that the said machine has been in use by said defendant for more than twelve (12) years last past, and that the same was purchased more than twelve (12) years ago by the said defendant from one A. I. Judge.

WHEREFORE, said defendant, having fully answered plaintiff's said Bill of Complaint, in so far as it is advised the said plaintiff is entitled to the relief demanded in said Bill of Complaint, or any part thereof, or any relief whatsoever, and prays to be

hence dismissed with its reasonable charges in this behalf.

CALIFORNIA CANNERIES COMPANY.

By ISIDOR JACOBS,

President.

ASHER, MEYERSTEIN & McNUTT,

Solicitors for Defendant.

JOSEPH C. MEYERSTEIN,

Of Counsel. [10]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

Isidor Jacobs, being first duly sworn, deposes and says: That he is an officer, to wit, president of the corporation defendant in the within-entitled action; that he has read the foregoing answer to plaintiff's Bill of Complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon his information or belief, and that as to those matters he believes it to be true.

ISIDOR JACOBS.

Subscribed and sworn to before me this 15th day of September, A. D. 1915.

[Seal]

JULIUS CALMANN,

Notary Public in and for the City and County of San Francisco, State of California.

Due service and receipt of a copy of the within Answer is hereby admitted this 15th day of September, 1915.

JOHN H. MILLER,

Attorney for Plff.

[Endorsed]: Filed Sep. 15, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

At a stated term of the District Court of the United States for the Northern District of California, Second Division, to wit, the November, 1915, term, held at the courtroom thereof at the city and county of San Francisco, State of California, on the 23d day of December, A. D. 1915. Present: Honorable WILLIAM C. VAN FLEET, United States District Judge.

IN EQUITY—No. 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

Interlocutory Decree.

This cause came to *to* be heard at this term and was argued by counsel, and thereupon, upon consideration thereof it was ORDERED, ADJUDGED and DECREED as follows, to wit:

1. That the full name of the plaintiff is Dunkley Company, and during all the times mentioned in the Bill of Complaint, said Dunkley Company was and still is a corporation created under the laws of the State of Michigan, and having its principal place of business at Kalamazoo, in said State of Michigan.

2. That the full name of the defendant is California Canneries Company, and during all said times

said defendant was and still is a corporation created and existing under the laws of the State of California, and having its principal place of business at the city and county of San Francisco, in the State of California. [12]

3. That on and prior to November 29, 1904, Samuel J. Dunkley, at Kalamazoo, Michigan, was the original, first and sole inventor of a new and useful invention, to wit, a machine for peeling peaches and other fruit, and on said last-named day duly and regularly made application to the Government of the United States for the issuance to him of letters patent therefor and before the issuance of any such patent, said Dunkley sold and assigned to the Dunkley Company, a corporation created under the laws of the State of Michigan, plaintiff herein, the afore-said invention and application together with such letters patent as might be granted thereon, and in and by such assignment requested that the said letters patent issue to the said assignee, the Dunkley Company.

4. That such proceedings were had and taken in the matter of said application, that thereafter, to wit, on July 21, 1914, letters patent of the United States for said invention, numbered 1,104,175, dated on said last-named day, were granted, issued and delivered by the Government of the United States to the said Dunkley Company, a corporation created under the laws of the State of Michigan, whereby there was granted to the said Dunkley Company, its successors and assigns, the sole and exclusive right to make, use and vend the said invention throughout

the United States of America, and the territories thereof, for the period of seventeen years, from July 21, 1914; that ever since the issuance of said letters patent, plaintiff has been and still is the owner and holder thereof.

5. That since the issuance of said letters patent plaintiff has practiced the said invention by putting into use and causing to be put into use machines containing and embodying the invention patented in and by said letters patent and upon each of such machines has marked the word "Patented," together with the date and number of said letters patent.
[13]

6. That the said letters patent, No. 1,104,175, dated July 21, 1914, are good and valid in law as to claims 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26—those being the only claims in respect of which infringement was charged in this case against the defendant.

7. That since the issuance of said letters patent, and within the Northern District of California, in the State of California, the defendant herein, California Canneries Company, a corporation created under the laws of the State of California, without the license or consent of the plaintiff has made and used machines for the peeling of peaches and other fruit containing and embodying the invention described in said letters patent and claimed and protected in and by said claims 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26, and has thereby infringed upon the said mentioned claims and each of them.

8. That each and all of the allegations in the Bill

of Complaint herein contained are true and that none of the defenses set up in the Defendant's Answer are sustained by the evidence, and that each and all of said defenses be and the same are hereby overruled.

9. That the defendant, herein, California Canneries Company, a corporation created under the laws of the State of California, its officers, agents, servants, attorneys, workmen and employees, be and they are and each one of them be and he is hereby permanently enjoined, and restrained from making, using or selling any machine or other devices for peeling peaches or other fruit containing or embodying the inventions described in said letters patent and claimed, patented and protected in and by said claims 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26 of said letters patent, No 1,104,175, dated July 21, 1914, or either or any of the said claims, and that a permanent writ of injunction be [14] issued out of and under the seal of this court commanding and enjoining the said defendant, its officers, agents, servants, attorneys, workmen and employees, as aforesaid, which said claims are in the words and figures following, to wit:

“5. In a peach-peeling machine, the combination with a tank for containing a skin-softening and loosening liquid, of a heater therefor, a conveyor passing through the tank for conveying the peaches into, through and out of said liquid, and a group of perforated water pipes for spraying the peaches with water as they pass length-

wise of and between said pipes, substantially as specified.

“6. In a peach-peeling machine, the combination with a tank for containing a skin-softening and loosening liquid, of a heater therefor, a conveyor passing through the tank for conveying the peaches into, through and out of said liquid, a group of perforated water pipes at the discharge end of said conveyor for spraying the peaches with water as they pass lengthwise of and between said pipes, and an endless conveyor arranged longitudinally of and between two of said pipes, substantially as specified.

“14. In a peach-peeling machine, the combination with a tank for containing a skin-softening and loosening liquid, of a heater therefor, a conveyor passing through the tank for conveying the peaches into, through and out of said liquid, a group of perforated water pipes at the discharging end of said conveyor for spraying the peaches with water as they pass lengthwise of and between said pipes, and a chute or hopper for automatically delivering the peaches to the tank conveyor, substantially as specified.

“19. In an apparatus for treating fruit such as peaches, means for removing previously disintegrated skin from the fruit, including a support for the fruit, means for effecting a change of position of the fruit on said supports, and means for directing peeling water jets upon said fruit.

“20. In an apparatus for removing the previously disintegrated skin from fruit, the combination with means for supporting and advancing the fruit, of means for directing a peeling water jet upon said fruit as it advances.

“21. In an apparatus for removing the previously disintegrated skin from fruit, the combination with means for supporting and advancing the fruit, of means for directing peeling jets of water at intervals upon said fruit as it advances.

“22. In an apparatus for removing the previously disintegrated skin from fruit, the combination with means for supporting and advancing the fruit, means [15] for directing peeling jets of water at intervals upon said fruit from above and below as it advances.

“23. In a peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing water sprays against the separate specimens thereof, and means for turning the said specimens to present all parts thereof to the spray for the purpose specified.

“24. In a peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing the water sprays against the separate specimens thereof, and a support with means for turning the said specimens to present all parts thereof to the spray for the purpose specified.

“25. In a peach-peeling machine for remov-

ing the previously disintegrated skin from fruit or vegetables, means for directing water sprays against the separate specimens thereof, and means for turning the said specimens to present all parts thereof to the spray for the purpose specified.

“26. In a peach-peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing the water sprays against the separate specimens thereof, and a support with means for turning the said specimens to present all parts thereof to the spray for the purpose specified.”

10. That plaintiff do have and recover of and from the defendant, California Canneries Company, the profits which the defendant has realized and the damages which the plaintiff has sustained from and by reason of the infringement aforesaid, and for the purpose of ascertaining and stating the amount of said profits and damages, it is ORDERED, ADJUDGED and DECREED that this cause be referred to H. M. Wright, Esq., Standing Master in Chancery of this court, to ascertain, take, state and report to this court an account of all the profits received, realized or accrued by and to the defendant and to assess all the damages suffered by the plaintiff from and by reason of the infringement aforesaid, and that on said accounting the plaintiff have the right to cause an examination of the officers, agents, servants, attorneys, workmen and employees of the defendant *ore tenus* and also be entitled to the [16] produc-

tion of the books, vouchers, documents and records of the defendant in connection with the accounting, and that the said officers, agents, servants, attorneys, workmen and employees of the defendant attend for such purpose before the Master from time to time as the Master shall direct.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff do have and recover its costs and disbursements in this suit to be hereafter taxed, and that plaintiff have the right to apply to the Court from time to time for such other and further relief as may be necessary and proper in the premises.

WM. C. VAN FLEET,
Judge.

Service of the within Interlocutory Decree admitted this 23d day of December, A. D. 1915.

ASHER, MEYERSTEIN & McNUTT,
McN.

For Defendant.

[Endorsed]: Filed and Entered December 23, 1915.
Walter B. Maling, Clerk. By J. A. Schaertzer,
Deputy Clerk. [17]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

IN EQUITY—No. 203.
DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,
Defendant.

Petition for Order Allowing Appeal.

California Canneries Company, the above-named defendant conceiving itself to be aggrieved by the interlocutory decree made and entered in the above-entitled cause in the above-entitled court, on the 20th day of December, 1915, wherein and whereby it was ordered, adjudged and decreed, that the defendant without the license or consent of the plaintiff, has made and used for the peeling of peaches and other fruits, containing and embodying invention described in letters patent No. 1,104,175, dated July 21, 1914, and claimed and protected in and by claims Nos. 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26, and has thereby infringed upon the said mentioned claims, and each of them; and that the defendant be perpetually enjoined from using, making or selling any machine or other devices for peeling peaches or other fruit containing or embodying the inventions described in said letters patent, and claimed and patented and protected in and by said claims last referred to, or any of them sued upon in said cause described in Complainant's Bill of Complaint, and by which Interlocutory Order and Decree, complainant was awarded a permanent injunction against the said defendant; and wherein and whereby it was decreed that plaintiff have and recover of defendant the profits which defendant has realized and the [18] damages which plaintiff has sustained from and by reason of the infringement aforesaid, and the said cause was referred to the standing Master in Chancery, of this court, to ascertain and

report to this court, an account of said profits and damages.

HEREBY petition said court for an order allowing said defendant to prosecute an Appeal from said Interlocutory Decree granting said permanent injunction to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, under and in accordance to the laws of the United States, in that behalf made and provided. Also that an order be made fixing the amount of security, which the said defendant shall give and furnish upon such appeal.

And your petitioner will ever pray.

ASHER, MEYERSTEIN & McNUTT,
Solicitors for Defendant.

[Endorsed]: Filed Jan. 14, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [19]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

IN EQUITY—No. 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

Assignment of Errors.

Now comes the California Canneries Company, the defendant in the above-entitled cause, and files the

following assignment of errors upon which it will rely in the United States Circuit Court of Appeals for the Ninth Circuit, and which it will rely upon its appeal in the above-entitled cause, viz.:

Error of the Court in granting the permanent injunction.

Error of the Court in finding that letters patent No. 1,104,175, dated July 21, 1914, are good and valid in law as to claims, 5, 6, 14, 19, 20, 21, 22, 23, 24, 25, and 26, or as to any of them, or as to any claims in said patent.

Error of the Court in finding, that since the issuance of said letters patent, the defendant herein, the California Canneries Company, without the license or consent of plaintiff has made or used machines or machine for peeling peaches or other fruit containing or embodying the invention described in said letters patent and claimed and protected in and by said claims 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26, or any of them and has thereby or otherwise infringed upon the said mentioned claims or any of them or any claim of the said letters patent. [20]

Error of the Court in finding that each and all of the allegations in the Bill of Complaint herein contained are true and particularly in finding that allegation eight (8) page three (3) of the said Bill of Complaint is true as follows: That since the issuance of said letters patent in the Northern District of California, and elsewhere, the defendant without the license or consent of the plaintiff, has made and used and is now engaged in using machines for peeling peaches or other fruit, containing or embodying

in and by the said letters patent No. 1,104,175, and has thereby infringed upon the said letters patent, and that by reason of the infringement aforesaid, defendant has realized profits and plaintiff has suffered damages; and in finding that none of the defenses set up in the defendant's answer are sustained by the evidence, and overruling each and all of the said defenses; and particularly in finding untrue the defense set up in paragraph three (3) of the Answer of the said defendant to be untrue.

Error of the Court in adjudging and decreeing that the defendant be perpetually enjoined and restrained from making, using or selling *and* machine or other device for the peeling of peaches or other fruit, containing or embodying the invention described in said letters patent, and claimed, patented and protected in and by claims 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26 of said letters patent or any of them; and in granting and causing to be issued out of the said court an injunction enjoining the defendant as aforesaid.

Error of the Court in finding and adjudging that device or machine found to have been used by the defendant and which the evidence before the Court proves to have been used by the defendant, was or is in any particular the mechanical equivalent of the invention embraced in the said letters patent, or in any claim thereof, or was or is in any particular an infringement [21] upon the said letters patent, or any claim thereof; and particularly in finding that the said device or machine proven to have been used

by defendant, is an infringement upon or the mechanical equivalent of the invention or device of plaintiff as described in the following claims of said patent, or any of them, to wit:

“5. In a peach-peeling machine, the combination with a tank for containing a skin-softening and loosening liquid, of a heater therefor, a conveyor passing through the tank for conveying the peaches into, through and out of said liquid, and a group of perforated water pipes for spraying the peaches with water as they pass lengthwise of and between said pipes, substantially as specified.

“6. In a peach-peeling machine, the combination with a tank for containing a skin-softening and loosening liquid, of a heater therefor, a conveyor passing through the tank for conveying the peaches into, through and out of said liquid, a group of perforated water pipes at the discharge end of said conveyor for spraying the peaches with water as they pass lengthwise of and between said pipes, and an endless conveyor arranged longitudinally of and between two of said pipes, substantially as specified.

“14. In a peach-peeling machine, the combination with a tank for containing a skin-softening and loosening liquid, of a heater therefor, a conveyor passing through the tank for conveying the peaches into, through and out of said liquid, a group of perforated water pipes at the discharging end of said conveyor for spraying

the peaches with water as they pass lengthwise of and between said pipes, and a chute or hopper for automatically delivering the peaches to the tank conveyor, substantially as specified.

“16. In an apparatus for *trating* fruit such as peaches, means for removing previously disintegrated skin from the fruit, including a support for the fruit, means for effecting a change of position of the fruit, on said supports, and means for directing peeling water jets upon said fruit.

“20. In an apparatus for removing the previously disintegrated skin from fruit, the combination with means for supporting and advancing the fruit, of means of directing a peeling water jet from said fruit as it advances.

“21. In an apparatus for removing the previously disintegrated skin from fruit, the combination with means for supporting and advancing the fruit, of means for directing peeling jets of water at intervals upon said fruit as it advances.

“22. In an apparatus for removing the previously distintegrated skin from fruit, the combination with means for supporting and advancing the fruit, means for directing peeling jets of water at intervals upon said fruit from above and below as it advances. [22]

“23. In a peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing water sprays against the separate specimens thereof, and means for

turning the said specimens to present all parts thereof to the spray for the purpose specified.

“24. In a peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing the water sprays against the separate specimens thereof, and a support with means for turning the said specimens to present all parts thereof to the spray for the purpose specified.

“25. In a peach-peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing water sprays against the separate specimens thereof, and means for turning the said specimens to present all parts thereof to the spray for the purpose specified.

“26. In a peeling machine for removing the previously disintegrated skin from fruit or vegetables, means for directing the water sprays against the separate specimens thereof, and a support with means for turning the said specimens to present all parts thereof to the spray for the purpose specified.

Error of the Court in adjudging and decreeing that plaintiff recover from defendant, profits which defendant has realized, or any profits, and damages which plaintiff has sustained, or any damage, by reason of the infringement found to have been committed by defendant upon the rights of plaintiff as embraced and set forth in said patent.

Error of the Court in adjudging that the plaintiff

have and recover its costs and disbursements in this suit.

WHEREFORE, the said defendant prays that the judgment of the District Court be reversed and that such other and further order be made as may be meet and proper in the premises.

ASHER, MEYERSTEIN & McNUTT,
Solicitors for Defendant.

[Endorsed]: File Jan. 14, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

IN EQUITY—No. 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

Order Allowing Appeal.

Upon motion of Asher, Meyerstein & McNutt, counsel for defendant, and on filing the petition of the California Canneries Company, the defendant, together with an assignment of errors.

IT IS ORDERED that an Appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit, from the Interlocutory Order entered on the 20th day of December, 1915, granting an injunction against the defendant herein

and decreeing that plaintiff have and recover from defendant, profit which defendant has realized and damages which plaintiff has sustained, and an order and reference to the standing Master in Chancery for the ascertainment and report of said profits and damages.

AND IT IS FURTHER ORDERED, adjudged and decreed that until the determination of the appeal herein, all further proceedings in the court below be stayed.

That the amount of the Bond upon said Appeal, be, and the same is hereby fixed at the sum of Five Thousand (\$5,000) Dollars.

IT IS FURTHER ORDERED, that a certified transcript [24] of the record and proceedings be forthwith transmitted to the said United States Court of Appeals.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Jan. 18, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

IN EQUITY—No. 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

Undertaking on Appeal.

Know All Men by These Presents, That the California Canneries Company, a corporation organized and existing under and by virtue of the laws of the State of California, and the Hartford Accident and Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, as surety are, and each of them is held and firmly bound unto the Dunkley Company, a corporation, in the sum of Five Thousand and 00/100 (\$5,000) Dollars, to be paid unto the said Dunkley Company, its successors and assigns, for which payment, well and truly to be made, the said California Canneries Company, and the Hartford Accident and Indemnity Company bind themselves and each of them and their successors and assigns, firmly by these presents, sealed with their respective corporate seals, dated this 19th day of January, 1916.

The condition of the above-named obligation is such that, whereas the above-named defendant has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the order made and entered by the United States District Court for the Northern District of California, Second Division, in the above-entitled cause, granting a permanent injunction enjoining and restraining the defendant, its agents [26] servants, etc., from manufacturing, selling, or using, or offering for sale, any machine or device for peeling peaches or other fruit, embodying the invention described in United States letters patent No. 1,104,175, granted Dunkley

Company, July 21st, 1914, and claimed by claims Nos. 5, 6, 14, 19, 20, 21, 22, 23, 24, 25 and 26 thereof, as heretofore construed by this Court, and ordering a reference to the standing Master in Chancery, for the purpose of ascertaining and reporting to the said Court, the profits of the said defendant, and the damages sustained by the said plaintiff, by the use by said defendant of a certain peach-peeling machine, which said order was rendered and entered in the said District Court and a Writ of Injunction issued in conformity therewith on the 20th day of December, 1915.

Now, therefore, if the above-named defendant shall prosecute said appeal to effect and answer all damages and costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

CALIFORNIA CANNERIES CO.

By ISIDOR JACOBS, (Seal)

President.

HARTFORD ACCIDENT AND INDEMNITY
COMPANY.

H. EVERETT CHARLTON, (Seal)

Resident Assistant Secretary. [27]

State of California,

City and County of San Francisco,—ss.

On this 19th day of January, in the year one thousand nine hundred and sixteen before me, James Mason a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared H. Everett Charlton

known to me to be the resident assistant secretary of Hartford Accident and Indemnity Company, the Corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the said city and county of San Francisco, the day and year in this certificate first above written.

[Seal]

JAMES MASON,

Notary Public, in and for the City and County of
San Francisco, State of California.

My commission will expire December 4th, 1919.

Approved Jany. 19, 1916.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 19, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [28]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

IN EQUITY—No. 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

Praeipie [for Transcript of Record].

To the Clerk of the Above-entitled Court:

The above-entitled court, having rendered in the above-entitled cause an Interlocutory Decree on the 20th day of December, A. D. 1915, and the said California Canneries Company, defendant above named, having appealed from said Decree to the United States Circuit Court of Appeals for the Ninth Circuit .

YOU ARE HEREBY requested to make up, as and for the record to be used in and upon the said appeal, the following:

Bill of Complaint for Infringement of Patent.

Answer of California Canneries Company to the Bill of Complaint.

Subpoena ad Respondendum.

Interlocutory Decree Granting Permanent Injunction and Ordering Reference to Standing Master in Chancery for Ascertainment for Damages and Profits.

Writ of Injunction.

Petition for Order Allowing Appeal.

Assignment of Errors.

Order Allowing Appeal.

Undertaking on Appeal.

Citation.

and a statement of the evidence introduced by and on behalf of the respective parties upon the trial in the above-entitled [29] court, of the above-entitled action, together with the documentary evidence

and exhibits offered and received in evidence in the above-entitled cause.

ASHER, MEYERSTEIN & McNUTT,
Attorneys for California Canneries Company, Defendant and Appellant.

Service and receipt of a copy of the within Praecipe is hereby admitted this 20th day of January, 1916.

JOHN H. MILLER,
Attorneys for Plff.

[Endorsed]: Filed Jan. 26, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 203—EQUITY.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing thirty (30) pages, numbered from 1 to 30 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for tran-

script of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$16.40; that said amount was paid by Asher, Meyerstein & McNutt, Esqrs., attorneys for defendant; and that the original citation issued herein is hereunto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 9th day of March, A. D. 1916.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled
March 9, '16. J. A. S.] [31]

[Citation on Appeal.]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley
Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the

Northern District of California, wherein California Canneries Company is appellant, and you are appellee, to show cause, if any there be, why the interlocutory decree rendered against the said appellant and granting a permanent injunction, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 19th day of January, A. D. 1916.

WM. C. VAN FLEET,
United States District Judge. [32]

[Endorsed]: No. 203. United States Circuit Court for the Northern District of California. Dunkley Company, Appellee, vs. California Canneries Company, Appellant. Citation on Appeal. Filed Jan. 19, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk

Receipt of copy of the within Citation admitted this 19th day of January, 1916.

JOHN H. MILLER,
Solicitor for Plaintiff.

[Endorsed]: No. 2764. United States Circuit Court of Appeals for the Ninth Circuit. California Canneries Company, a Corporation, Appellant, vs. Dunkley Company, a Corporation, Appellee. Tran-

script of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed March 18, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —.

CALIFORNIA CANNERIES COMPANY,
Appellant,

vs.

DUNKLEY COMPANY,
Appellee.

**Order Extending Time to File Record and Docket
Case.**

On reading and filing the annexed Stipulation, and good cause appearing therefor,

IT IS ORDERED that appellant above named have to and including the 20th day of March, 1916, within which to file record of appeal herein and to docket said case with the clerk of the above-entitled court.

Dated this 20th day of February, 1916.

WM. W. MORROW,
Judge of Said Court.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —.

CALIFORNIA CANNERIES COMPANY,
Appellant,

vs.

DUNKLEY COMPANY,
Appellee.

**Stipulation Extending Time to File Record on
Appeal and to Docket Case With the Clerk of
the Court Above Entitled.**

IT IS HEREBY STIPULATED by and between
the respective parties hereto that the appellant
above named have to and including the 20th day of
March, 1916, within which to file its record on ap-
peal in the above-entitled case and to docket the
said case with the clerk of said court.

Dated this 14th day of February, 1916.

JOHN H. MILLER,

Attorney for Appellee.

ASHER, MEYERSTEIN & McNUTT,

Attorneys for Appellant.

MAXWELL McNUTT,

Of Counsel for Appellant.

[Endorsed]: No. 2764. In the United States
Circuit Court of Appeals for the Ninth Circuit.
California Canneries Co., Appellant, vs. Dunkley
Company, Appellee. Stipulation and Order Extend-
ing Time to File Record and to Docket Case. Filed
Feb. 15, 1916. F. D. Monckton, Clerk. Refiled,
Mar. 18, 1916. F. D. Monckton, Clerk.

